

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 709 of 1995

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

AJIT D. PADIVAL

Versus

UNION OF INDIA

Appearance:

(MR AD PADIVAL) for Petitioner
Mr.Premal Joshi, ASSTT.GOVERNMENT PLEADER
for Respondent No. 1
M/S TRIVEDI & GUPTA for Respondent No. 5
MR GIRISH PATEL for Respondent No. 6, 7

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: 05/10/1999

NORAL JUDGEMENT

1. The Registry has placed the matter before us for
passing appropriate order in view of the fact that late

Mr.Ajit D.Padiwal, a practising advocate of this court at that time had drawn the attention of the court by addressing a letter dated 1.2.1995 requesting the Honourable Chief Justice and companion Judges to treat the same as also press cuttings in Indian Express, dated January 30, 1995 and the Times of India, dated 1.2.1995 as public interest litigation and to do the needful in the larger interest of humanity and environment.

2. It was stated in the said letter that grave irregularities and illegalities were committed by the persons mentioned in the said letter in destroying the Gir Sanctuary. It appears that the Division Bench registered the same as Special Civil Application No.709/95, notices were issued and statusquo was also granted, and the report of the Commissioner was called for. The Commissioner appointed by the Court submitted his report on February 14, 1995 which was placed in the court and same is made part of the record. In para 7 of the said report it was stated as under:

"7. Any kind of new construction in this area

or on the remaining part of 50 acres of land in question without cutting trees and disturbing the wild life, is impossible; except within the precincts of the existing temple complex and in the adjacent open plot of about 2 acres presently used for growing gross. The rest of the area comprised in 50 acres of land (comprising of 19 acres of Wankidas Block and 31 acres of Kanakai Block) enjoys an ideal and natural but precarious ecological balance of flora and fauna which can be disturbed even by excessive vehicular traffic, noise, pollution or any kind of human activity, in the vicinity.

Presently, there is no evidence or report

of any recent cutting of trees in the area. The river side protection wall of the temple complex is reported to have been washed away during the last monsoon; and it is left in an early stage of reconstruction".

3. It also appears that the affidavits were filed. Affidavit was filed by K.L.Vankar, Under Secretary, Govt.of Gujarat, Forest Department, Sachivalaya, Gandhinagar and after narrating the fact that the land was allotted to Kankeswari Temple trust by erstwhile State regarding construction in para 11 it was mentioned

as under:

"I say that thus it is clear that the land in question is not allotted to the Trust for the first time by the State of Gujarat as mentioned in the Newspaper report as well as in the petition filed by the petitioner. I say that no hotel complex is under contemplation and no such permission is sought. Even if it is sought, such permission can not be granted. I further say that the question of granting permission to put up any construction over the land in question has so far not come either before the Government nor anyother officials of the Forest Department at any level. I say that totally baseless report is published in the Newspaper. I further say that the question of giving further land to Kankeswari Mata Trust or of giving any land to any private party including Sanghi cement is not even under consideration and no such proposal is pending on the file of the Government. Under the circumstances, merely on certain hear say report the petitioner has filed the present petition and the Newspaper has also published the report also without any verification. Under the circumstances, I say that the present petition deserves to be dismissed."

4. Affidavit was also filed on behalf of the respondent No.5-Trust in which it was stated that the trust was registered under the provisions of Bombay Public Trusts Act, 1950. Regarding construction in para 6 it was stated as under:

"As mentioned in Annexure "A" it is false that some 50 hectares of forest land has recently been allotted to the Trust. The title of Annexure "B" to the petition is misleading. No 'Lion's Den' has been gifted to the temple. It is also false that the Gujarat Forest Department has allotted 52 acres of reserved forest land to the Trust. It is also false to state that such an alleged allotment was made without procedural approvals, and since no such allotment was recently made, the question of procedural approvals does not arise. It is also false to state that the Trust sought permission to construct a Hotel or Tourist Hostel from the Government. It is also false to

state that any map of such alleged construction has been prepared by the Trust. I further say that no such constructions are even in the contemplation of the Trust."

In para 26 it was, again, stated as under:

" I further say that not only the Trust but all the Devotees of Shri Kankai Mata are interested in forest conservation as much as or perhaps more than the petitioner claims. The property granted to the Trust and owned and possessed by the Trust is always utilised in a manner which is not derogatory to the Forest conservation and is being used to enhance the environment aspect of the Gir Forest. The right of the devotees to come to the temple, offer worship, Bhog and prasad to the deity and to stay in the dharamshalas is a fundamental right guaranteed to the Trust and its beneficiaries under the constitution and such a right can not be taken away nor can the trust be deprived of such rights except under due process of law. I further say that in case the petition is admitted and/or allowed it will have the effect of an infringement of the rights of the trust as well as the beneficiaries of the Trust".

5. Further affidavit was filed on behalf of State authorities and Chief Conservator of Forests-respondent No.3 herein in his affidavit, dated 7.8.99 stated in paras 14, 15 and 16 as under:

"14. I say that the Honourable Supreme Court has in the case of T.N.Godavarman Thirumulkpad versus Union of India and others reported in (1997)2 Supreme Court Cases Writ petition (civil) 202/95 has directed that all on going nonforest activity within any forest in any State through the country, without the prior approval of the Central Government, must cease forthwith. It is further directed that this order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any authority, including the Central or State Government or any court (including High Court) or Tribunal.

15. I submit that Local Court Commissioner by

this Honourable Court in the present Special Civil Application has clearly set out the facts with respect to the property involved in the present petition, in the report dated 14th February, 1995 submitted by the Commissioner, which is on the record of the Honourable Court.

16. I further submit that the Honourable Supreme Court has in the matter of Writ Petition Civil No.337 of 1995, by an order dated 22nd August, 1997 directed that for denotification of any area which is included in a Sanctuary or National Park, the concerned State Government shall refer the proposal to the Indian Board for Wildlife (IBWL) for its opinion and the proposal shall be placed for consideration before the legislative Assembly along with the opinion of the IBWL under the provisions of section 26 A (3) of the Wildlife (Protection) Act, 1972. In view of the fact that the lands in question have been notified as Wildlife Sanctuary, the aforesaid directions of the Honourable Supreme Court would be applicable with respect to the same".

6. In view of the fact that no construction was made nor was even in contemplation, in our opinion, petition deserves to be dismissed. It goes without saying that the authorities will have to bear in mind the observations made by the Supreme Court in the decisions referred to in the affidavit-in-reply dated 7.8.99 filed by the Chief Conservator of Forests as also other relevant judgments of the Supreme Court on the point.

7. So far as at this stage is concerned, nothing requires to be done in the matter and the petition is accordingly dismissed. Rule is discharged. No costs. Interim relief granted earlier stands vacated.

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